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כנסת הרבנים

THE RABBINICAL ASSEMBLY

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NEW YORK, N. Y. 10027

COMMITTEE ON JEWISH LAW AND STANDARDS  
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July 20, 1976

Dear Colleague:

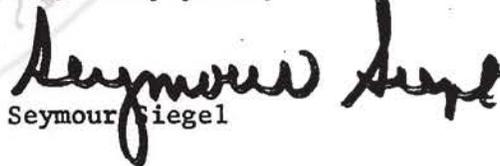
We are enclosing the newest summary of decisions of the Committee on Jewish Law and Standards. It covers the areas of conversion and intermarriage. It goes without saying that these are sensitive and complex areas and we hope that these summaries will be helpful to colleagues.

As I have previously stated, we are ready to re-open questions even though decisions have already been rendered. Many of the members of the Committee feel that we should reconsider the question of the status of converts who were converted by rabbis who do not generally accept our standards, and also the question of hatafat dam berit. We will be considering papers and teshuvot on these matters in future meetings of the Committee.

We are also planning meetings with psychiatrists, social workers and community workers who can advise us on the medical and social dimensions of some of the decisions we as rabbis have to make in these very sensitive areas.

With every good wish for a fruitful and restful summer, I am,

Very truly yours,

  
Seymour Siegel

SS:lw  
Enc.

## CONVERSION & INTERMARRIAGE

A summary of the decisions of the Committee  
on Jewish Law And Standards

### ADOPTION

- 1) For a male of non-Jewish origin- circumcision should take place on the eighth day leshem gayrut. If the eighth day is shabbat or Yom tov the circumcision is to be postponed. Sometime before the thirteenth birthday tevillah should take place al daat bet din.
- 2) For a female- tevillah should take place sometime before twelfth birthday al daat bet din. H119, N85, 290 (1957)
- 3) For a child of doubtful parentage tevillah is required and should not be postponed until the teens. N 352 (1957)
- 4) A rabbi may state in court that an adopted child is Jewish once the conversion process has begun. P164 (1959)
- 5) A child of non-Jewish origin adopted by Jews and raised as a Jew is not considered Jewish unless formal conversion takes place. Letter dated May 1975
- 6) If adopted before child is 8 days old, the benediction at the brit should be recited by foster-father, and the child may be named as the son of the foster-father. Since whereabouts of natural father are unknown there is no pidyon haben.

R.A. Proceedings 1964 p. 46

AGE- Conversion of a minor may take place at any age al daat bet din. However the child has an option to reconsider at a later date. A384,N312,R393,S166 (1961)

### APOSTATE

- 1) A Jew who converted and returns to Judaism should undergo tevillah without a blessing and make a declaration in the presence of a bet din consisting of a rabbi and two prominent laymen. C2 § 71 T233,299 (1963)
- 2) Burial in a Jewish cemetery should be discouraged though technically permitted.

(Wn (see. Kone etc. file.)

N140 (1957)

BAR & BAT MITZVAH- Conversion must take place before the bar and bat mitzvah.

L103,306,P215,R393 (1961)

BET DIN

1) The bet din may consist of one rabbi and two laymen. A257,421 C2 (1949)

BURIAL

1) If conversion was done by a Reform rabbi we may be lenient regarding the burial of a convert in a Jewish cemetery. C2, H235,R360 (1960)

2) Burial for an apostate in a Jewish cemetery should be discouraged though technically permitted. (אין להקנות קברו של אפוסטט). N140 (1957)

3) Non-Jewish member of a mixed marriage may be buried in a Jewish cemetery under exceptional circumstances. D25,83 (1950)

CONSENT

1) If a gentile child has a father, the father has a right to convert him. If the father is dead and the mother wants to convert the child (in the case of a Jew who married a non-Jewish woman) then conversion takes place by and with the consent of a bet din. (צדק אלהים עליהם). The child has a right to reject conversion prior to his majority (yoreh de'ah 268,7-8 ). A 384 (1945)

2) A child needs consent of a parent to convert if the child is not considered a baal daat. If the mother is non-Jewish and father is Jewish consent of the mother is required since (ואין בןק הבא מן הנכחית קרוי בןק אלא בנה) A257 (1946)

3) Conversion may proceed with the mother's consent even if the mother refuses to be converted. A257, B4 (1944)

FEES- There are no fixed fees for conversion. X107 (1968)

FILING- The RA office does not keep a file on geyrim. That is the responsibility of the individual rabbi. Y435 (1969)

FORMAL CONVERSION- A formal conversion ceremony by a rabbi is required. A mere professing of the Jewish faith is not enough. K219b (1955)

GUIDE- A guide for the admission of geyrim is available P57a-s (1959)

The following is briefly what it contains:

1. The rabbi should acquaint himself with the family conditions and connections of the applicant and his motives.
2. Most convert because of marriage, but the Rabbi may evoke sincere interest.
3. The proselyte may influence a lax Jew ( his mate).
4. The Jewish partner should be invited to the hour of instruction. Also a few sessions should be held with him privately as to the seriousness of his step and his responsibility as regards the happiness of his home and the effect upon the Jewish people.
5. The proselyte is expected to adopt a new attitude, a complete new spiritual birth. The traditional formula prescribed in Masekhet Gerim and detailed in the codes make clear the act and its implications.
6. The process of prayer should be mapped out.
7. The Rabbi should not consent to a hasty conversion. The applicant should agree to a session of study after the conversion.
8. There should be at least three months of intensive study with assisting lessons. Without casting aspersions, it should be shown how Judaism differs.
9. Mention should be made of the Ten Commandments, God, Messiah, the calendar, dietary laws.
10. Cite the prayer-book, Bible, a text on Jewish religion and history.
11. The applicant should attend synagogue, be introduced to Jews, and brought into Jewish homes.
12. The approach must differ according to the former religious affiliations.

13. When preparation is to be concluded, the Rabbi should consult with two colleagues, or with two pious members. They should be invited to act with him at the ceremony.

14. There must be circumcision and ritual immersion. In the latter the presence of witnesses is necessary. In the case of a female applicant, two pious women should accompany her to the mikvah.

15. A court of three should meet for questioning the applicant. A declaration of some sort should be drawn up.

#### HATAFAT DAM BRIT

- 1) In order to satisfy the requirements of hatafat dam brit the mere discoloration of the tip of the needle is sufficient. R153,254 (1960)
- 2) Hatafat dam brit is the completion of the circumcision. Therefore it can not be performed on any other part of the body. S351,U178 (1964)
- 3) Majority Opinion- required of a ger mahul.

Reasons: The basic tannaitic text for this problem found in Shabbat 135a is problematic because various authorities, both tannaitic and amoraic, disagree about the subject of the disagreement between Bet Hillel and Bet Shammai. The geonim as quoted in the Alfasi dealt with the problem of a ger mahul and required hatafat dam brit. R.Hananel went even further and said גיר מליכה and he can not be converted. One tosafist Rabbi Isaac Hazaken and tosafot Rid and tosafot Yeshanin (Yebamat 465b) rule that hatafat dam brit is not required. The Rosh, Maimonides and the Shulhan Arukh require it. Rabbi Marcus Breger (our colleague) did a study on this subject and only 3 out of 44 authorities did not require it. In addition the French Authorities who did not require it lived in a Christian world where this question was not a reality and therefore was not dealt with seriously. But in Arab countries where people were normally circumcised it was a serious problem. Our situation is similar to that of the Arab countries. In our days the incidence of conversion is greater and in many cases the conversion is done to please one party and one set of parents and not out of conviction. Therefore it

is imperative not to diminish the significance of circumcision. The fact that he is mahul does not make him part of a covenant. If the convert were not circumcised, we would all agree that milah is required. If we insist on this, we should not hesitate to require hatafah. Brit Milah to most Jews involves identity and identification. It has always meant more than surgery. To reduce it to a surgical procedure would be unthinkable. Teshuvah written by Eli Bohnen. Y217-222 (1969)

MINORITY DECISION- A heter should be issued to receive a ger mahul without demanding hatafat dam brit as a mandatory pre-requisite.

Reasons: In discussing the Tannaitic sources mentioned concerning the problem, it is shown that there is no compelling reason to accept the Alfasi who says the gemara requires hatafat dam brit since the disagreement is concerning a nolad mahul and not a ger mahul. The poskim eliminated the ger from the discussion and applied the discussion to a nolad mahul. When one examines all the Tannaitic sources, it is clear that one school did not require hatafat dam brit for a ger mahul. While it is true that the weight of medieval commentaries and codes do require hatafat dam brit, it is important to approach halakhah from the historical position which relies on the original sources and not on the medieval commentaries. If we were to follow hilkhata k'batrai we would be ultra Orthodox. In addition the post talmudic development of the halakhah was related to political conditions which required the rabbis to place obstacles in the way of potential geyrim. The fact that in these cases the berakhah is omitted shows that the sages regarded hatafat dam brit as a safek. We should require milah of all uncircumcised proselytes (l'khathila) but if the proselyte is circumcised, we accept the sign of the covenant with prayer and a formula (b'diavad). A more biblical approach to conversion will be of great benefit to Judaism. We recommend an optional approach which will give a heter to those cases where the rabbi feels it can be done, but at the same time does not require the rabbi to always apply the heter. Teshuvah written by Rabbi Phillip Sigal. Y177-180 (1969)

INTERMARRIAGE

1) It is the unanimous judgement of the Committee on Jewish Law and Standards that a member of the Rabbinical Assembly or of the Cantors' Assembly may not officiate at the marriage of a Jew to an unconverted non-Jew, that he may not co-officiate with any other clergyman, nor may he officiate at or be present at a purely civil ceremony, nor may the Conservative Synagogue be used for such a marriage.

Neither a Rabbi nor a Cantor can divest himself of his role as a representative of the Jewish faith and claim to perform such a marriage in a civil capacity. There is no other way to interpret the presence of a Rabbi or a Cantor at a marriage other than as a form of approval.

The openness of modern society in major portions of the world has confronted us with unprecedented problems of mixed marriage. Every effort should be made to retain contact with a couple united in a mixed-marriage, to expose them to the influence of a Synagogue, of the Rabbi, of Jewish family life and Jewish teaching. The mixed-married couple deserve our deep concern. We urge the Executive Council of the Rabbinical Assembly to initiate discussion with the other arms of Conservative Judaism to study the problem in depth.

Carried Unanimously,  
February 24, 1972

A recommendation for expulsion may be made on these grounds.

2) Membership in the Synagogue- Majority decision permits membership for the Jewish spouse under certain conditions.

Discussion: This is not a question of halakhah but of rabbinic standards since halakhically a Jew who intermarries does not read himself out of the community though he is subject to penalties which are not applicable today. We should approach the problem from the point of view of what is good for the community. We should state our view against intermarriages, and the rabbi and all organizations should work to prevent such occurrences. However when in spite of all efforts an intermarriage takes place we believe it is in the best interest of the community to win these people over to Jewish life. The rabbi should meet with the couple regularly, persuade them to

attend classes and services. After a period of time he should raise the issue of conversion. If the non-Jewish spouse refuses, then the rabbi should make clear to the couple what their status will be in relationship to the congregation. 1) The Jewish party to the marriage may be accepted provided there is a definite agreement that the children shall be raised as Jews and converted to Judaism if the mother is non-Jewish. 2) The privileges of membership do not apply to the non-Jewish spouse. 3) The intermarried Jew, while admitted to membership should not hold any office or serve as chairman of any committee nor be singled out for any special honors. 4) If one intermarries after being admitted to membership, this does not deprive them of membership. The above conditions apply. If there is a refusal to give the children a Jewish education and convert them where it is necessary, membership shall be forfeited. 5) When the non-Jewish spouse converts, all restrictions and limitations shall be lifted. The penalties of the previous takkanah did not prevent an increase in intermarriage and it would be terrible for the synagogue to be accused of not following the injunction of אלהי אברהם אבינו. The conditions presented here served the interests of the Jewish people as well as the dictates of our religious conscience.

Paper written by Rabbi Max J. Routtenberg RA Proceedings 1964 pp 244-248

DISSENTING OPINION- Membership should be forfeited unless certain conditions are met.

DISCUSSION: There should be a single standard for a Jew who is intermarried and applies for membership and one who intermarries after becoming a member of a congregation. That standard is the insistence upon the conversion of the non-Jewish spouse as an unconditional requirement. This is a question of standards not halakhah and the function of standards is to raise the dignity of Judaism. Standards in relationship to the intermarried Jew have the additional concern for the survival of the Jewish people and Judaism. What can be done to stop the tide of intermarriage? Liberalizing the attitude to conversion can help and מתוך שאף לטובה הוא לטובה therefore we encourage the conversion. However if intermarriages without the possibility of conversion exists, the only sanction we have is forfeiture of membership. The desire for membership should be used as a motivation for conversion and not as a means of coercion. By bestowing

membership we negate the Jewish concept of marriage as a spiritual relationship. One who intermarries "is living in perpetual sin", and to bestow membership would lower the standards for membership in general. Allowing a conditional membership can cause problems when in the future people discover that the children are not Jewish. Therefore the following should be done: 1) The congregation should inform the Jewish partner that the by-laws empower the congregation to terminate the membership. 2) The congregation should invite the non-Jew to convert. 3) The rabbi should take an active interest in the couple. 4) Allow the couple five years to regularize their status. The penalty for failure to do so is forfeiture of synagogue membership.

Paper written by Rabbi Wilfred Schuchat

RA Proceedings 1964 pp 249-254

MARRIAGE

1) In the case of a woman already married to a Jewish man the 90 day waiting period between conversion and kiddushin may be waived. In fact it is desirable to have the marriage performed as soon as possible. T601 (1959)

2) Kohen and a Giyoret- a rabbi may officiate at the wedding.

Reasons: Leviticus 21:7 states that a Kohen "shall not take a woman that is a harlot or profaned... for he is holy unto his God." The rabbis explained "harlot"

(zonah) to include all women whose moral purity is impugned- *כל נשואה אסורה לכהן*

*אם נשואה אסורה לכהן*. There is some disagreement whether this refers to women proselytes who were converted after the age of three or to all proselytes regardless of the age at the time of conversion and even applies to children of proselytes. This is traced to differing interpretations of a verse in Ezekiel (44:22) "They shall not marry a widow or a divorced woman, but only a virgin of the stock of the house of Israel, or a widow who is the widow of a Kohen." The phrase "but only a virgin of the stock of the house of Israel" serves as the basis for the above mentioned positions. Maimonides based the same against the marriage in Leviticus *אם נשואה אסורה לכהן*

(laws of forbidden marriages 18:1). However the Rabad bases it on Ezekiel. Some commentators combine both by saying whoever is not a bat yisrael is b'hezkat zonah.

The rabbis even though they were not in favor of proselytizing nevertheless considered the proselytes equal in all ways to an Israelite from birth. The only exception is the marriage of a Kohen to a giyoret. Since we permit a kohen to marry a gerushah we should permit this marriage. However there is something additional involved in this case. The giyoret was stamped as harlot even if she herself is not suspect because her people are שלא הם בני ישראל. This being the case we now have a new factor namely הואו הילק. There are precedents set by Professor David Hoffman and Rabbi Yehudah Leib Zirelson of Kishinev who permitted this type of marriage in order to prevent הואו הילק. Today it would be הואו הילק to prohibit such a marriage because her people are שלא הם בני ישראל. The moral standards of days gone by have changed both for the Israelites as well as for the non-Jews. Since in this case קניזשין תיכסין, and in Israel while a rabbi will not officiate, nevertheless the rabbinic courts must accept the kiddushin if they took place and since the status of all kohanin today is in doubt ( אלה סימן תנן, ומן אברהם סקט ), and since today the non-Jews are considered on par with Israelites in many respects ( אנציקלופדיה ) we are of the opinion that we permit a kohen to marry a giyoret.

Teshuvah by Rabbi Isaac Klein -RA Proceedings 1968 pp 219-223

Adopted unanimously November 8, 1967.

GROUP CONVERSION- Depends on local custom. The Philadelphia Branch of the RA has developed a ceremony for group conversion. T51,601 (1959)

#### MILAH

- 1) If child is older than 8 days, milah should take place as soon as possible, except on shabbat and Yom tov. The b'rakhah is lamul et hager.
- 2) Milah before the 8th day is not recognized as a valid milah. Therefore hatafat dam brit is required. L306,R254.(1960)
- 3) If milah was done leshem geyrut with permission of the non-Jewish mother who has not converted, no hatafah is required. However tevillah is required before the age of majority. R51 (1959)
- 4) Medical circumcision is not sufficient to permit the child to be a bar mitzvah,

hafafat dam brit is required.

R153 (1960)

5) Milah should not take place on shabbat or Yom toy for an adopted child.

See adoption

P164 (1959)

#### NAMING

1) Naming should not take place in the synagogue before conversion.

N85, 290 (1957)

2) The adopted child of a non-Jewish mother may be named in the synagogue only after tevillah. However the Committee has ruled that under exceptional circumstances such a child may be named at home before tevillah.

U429 (1964)

3) A child of a Jewish woman married to a non-Jew is named after his mother, for example Reuben ben Rachel.

4) A child of a non-Jewish woman married to a Jew can be named after the father and does not have to be named ben avraham avinu upon conversion.

F111 (1951)

NON-JEWISH WIFE- If the father is a non-Jew and the mother is a bat Kohen or bat levi no pidyon is necessary. If the mother is a bat yisrael than the child will have to redeem himself when he grows up.

B4 (1944)

#### PREGNANCY

1) The children of a woman converted while she is pregnant will be born as Jews.

H332 (1955)

2) Child born of a Jewish mother who converted to christianity before giving birth is Jewish. However tevillah should take place. There is no need for bet din.

N103 (1958)

PROCEDURE - A pious Jewish woman prepares the prospective female convert for immersion and stays with her throughout the ceremony (Hilkhoh Geyrim, Yoreh Deah 268:2). There should be a bet din, if possible, behind a partition who listen to the convert as she repeats the two benedictions after the woman in charge. Following this ceremony, the convert is then taken to a synagogue, she is questioned by the bet din as to her intentions and with reference to the material which she has studied. Finally a

concluding ceremony is conducted before the aron kodesh, again in the presence of the bet din, in which one declaration is read by the convert and a second by a member of the bet din. T51 (1963)

QUESTIONABLE STATUS - Majority decision requires milah and tevillah. Tevillah may be waived under unusual circumstances however the rabbi should consult the Committee before reaching a decision.

Reasons: Since American Jews do not live in isolation, in enclaves of Orthodox, Conservative or Reform, we are presented with cases of converts who do not meet our requirements but have met the requirements of other rabbis. Reform conversion can lack tevillah and for males milah as well but the convert has studied about Judaism. On the other hand Orthodox conversion fulfills the requirements of tevillah and milah for men but study is lacking. We must indicate to a convert who lacks tevillah and/or milah that our requirements are more stringent even though this conversion procedure satisfactorily met the requirements of other groups. In those cases where insistence upon tevillah might be traumatic in the opinion of the rabbi, he may seek some course which will obviate the necessity of tevillah. Perhaps at some time the convert had been immersed in a body of water that is ritually acceptable without the intent that it was for conversion, and accept this. In extraordinary cases an outstanding rabbinic authority accepted evidence of having bathed in the sea as fulfillment of the requirement of tevillah. Such procedure can be acceptable only as a last resort when no other solution is possible. Even in such cases we strongly recommend that the rabbi should seek counsel from the Committee. Paper written by Rabbi Eli Bohnen,

RA Proceedings, 1966 pp 105-128

Minority decision recognizes all conversions in which the good faith of the proselyte is demonstrated.

CONVERTS of questionable status- This paper was prepared for the Committee on Jewish Law and Standards of The Rabbinical Assembly. Members of the Committee associating themselves with it are Rabbi Aaron Blumenthal, author of the paper, and Rabbi Leon Fink.

The following references are taken from "A Summary of Decisions on Conversions" prepared for the Committee:

"Any person converted to Judaism, regardless of the nature of the conversion, is considered to be a Jew for purposes of burial in a Jewish cemetery"(H235, 1953).

"A conversion ceremony performed by a Reform rabbi may be recognized by a Conservative congregation" (K 61, 1955).

"A convert to Judaism by a Reform rabbi may be recognized by us and given full rights of a Jew. Such a person may be accepted into membership by our congregations and given full privileges that any other member receives, children to be educated and married by us, etc." (K 249, 1955).

"A person accepted into Judaism by a Reform rabbi is to be recognized as Jewish!" L 142, 188, 1956).

"Proselytes who have been converted by Reform rabbis shall be recognized as full-fledged Jews providing that, if the proselyte be male, he be circumcised"(N188, 1959).

I agree with Rabbi Bohnen's exhortation to our colleagues that all conversions be performed with due regard for the Halakhic requirement of tevillah. That, however, is not the heart of our problem, which is the status of a conversion performed without tevillah. Do we or do we not recognize the validity of such a conversion, and do we permit the children of such converts to be considered full Jews in our congregations?

Earlier decisions of this Committee have stipulated that we recognize all conversions in which the good faith of the proselyte is demonstrated. Enrolling one's child in a Jewish religious school and presenting one's child for Bar Mitzvah are prima facie evidence of the good faith of the original conversion and of the Jewishness of the family.

We find no cogent reason for changing the original decision of this Committee. American Jewish life is not monolithic. Our predecessors on this Committee were not unaware of the divisions within religious Judaism, of the demands of the Halakhah, or of the attitude of the Orthodox community towards non-Orthodox marriage, divorce and conversion officiations. There have been no new developments, no significant changes of circumstance to warrant a retreat from our earlier position. Conversely, the increase in the rate of intermarriage suggests that we should strive to embrace as many of these couples as possible within the Jewish fold.

This does not mean that the Conservative rabbi is to desist from commendable attempt to have the family conform to our standards. It does mean that such converts and their children may not be excluded from our congregations. They are to be accorded all the rights and privileges of gere tzedek.

SHABBAT Milah for an adopted gentile child should not be performed on Shabbat or Yom tov . P164 (1959)

STANDARDS

1) We reaffirm the principle of the mara d'atra, therefore for a rabbi to perform a wedding ceremony the convert must be converted on terms acceptable to the rabbi. (A case where the convert asked to be free of the obligation to keep a kosher home).

2) A convert should be properly instructed according to their capabilities. Conversion should be possible to those not greatly gifted in their capacity to learn.

3) In exceptional cases certificates of conversion may be issued on condition that study will continue afterwards. T195 (1962)

4) Non-Jews who insist upon maintaining the Christian belief in Jesus at the time of conversion or thereafter should not be accepted into the Jewish faith.

W84 (1966)

5) The fact that the non-Jewish mother will not convert does not prejudice the case of the child who wants to convert. A421, 0200 (1958)

6) A person converted to Judaism is considered as a full fledged Jew in all respects. N76, 076 (1957)

SWIMMING POOL- May be used as a mikvah for conversion.

Reasons: The pipes and reservoir are in the category of הקקו ואה"נ היקקו and are not considered כלי. The retainer and filter tanks through which the water flows and empties into the pool are not the kind of vessels that cause the water to become לא אובין because a) the filter tank was not made to hold the water but rather to move the water on, b) a קבוצה must retain something of value and that does not apply to the dirt removed in the filtering process. Even if we were to assume that the water is rendered לא אובין by the pipes, retainers, reservoirs and filters, the preponderance of poskim say that the issur of לא אובין is rabbinic (קרבן). According to the opinion some poskim state that לא אובין לא אובין and this certainly is the case in a swimming pool. Therefore the water when it enters the pool is considered fit for a mikvah. The question of whether the opening of the valve would render the water לא אובין is no problem because the water in such a case comes לפי which is permissible. Since the drain of the pool is on the side and not in the middle, it is not considered a כלי, therefore the water is not considered לא אובין. Even if the drain is in the middle, it is not considered an independent receptacle, it is a case of קבוצה ואקיקה לא אובין. Many authorities state that the swimming pool fulfills the requirements of לא אובין because the water is constantly circulating. Therefore it is not considered לא אובין. In addition there is always מ'ס'נ in the pool at the time and place of the immersion, and if not, we can shut down the filter for the duration of the tevillah. Tevillah is done for spiritual reasons, to symbolize the converts identification with the Jewish people. Therefore we must make sure that when we use a swimming pool, all efforts should be made to create the proper setting. The pool should be housed in a synagogue center or in a Jewish community center. At the time of tevillah, all apparatus used for entertainment should be covered, and the proper mood for spiritual experience

should be set. Teshuvah written by Rabbi Benjamin Z. Kreitman

Unanimously accepted. RA Proceedings 1969, pp 219-222

1) If medically impossible at the present time, conversion can take place on condition that tevillah will be done in the future when possible.

D72 (1953)

2) Can take place in a river or lake if no mikvah is available. Convert should be clothed in a loose fitting bathing suit.

T333 (1963)

3) Requires a bet din of three.

V90 (1965)

4) A child raised as a Jew, educated in a Jewish religious school, confirmed, etc. whose mother was a non-Jew should undergo tevillah. If the child cannot be persuaded to do so, then the previous bathing in the ocean is accepted by some authorities as a valid tevillah.

V331 (1966)

5) A Jew who has undergone a ritual of conversion of another religion and wishes to be reinstated, while technically Jewish, should undergo tevillah and appear before a bet din to symbolize the change in their religious life.

T233 (1962)

6) A child born to a Jewish woman who converted during pregnancy is Jewish but should undergo tevillah. A bet din is not necessary.

N103 (1958)

To Mare Tannenbaum  
With all best wishes  
Stanley M. Wagner

THE MESHUMAD AND MUMAR IN TALMUDIC LITERATURE

by

STANLEY M. WAGNER



Reprint from

THE  
*Jacob Dolnitzky*  
MEMORIAL  
VOLUME

## THE MESHUMAD AND MUMAR IN TALMUDIC LITERATURE

by

STANLEY M. WAGNER

Among the most oft used appellations for a heretic, apostate or religious dissident in Talmudic literature are the designations *Meshumad* (משומד) and *Mumar* (מומר). We shall endeavor in this study to discuss the meaning of these terms, the type of dissidence with which the *Meshumad* and *Mumar* were charged and their status within the Jewish community as delineated by the halakha.

The Talmud, as is well known, was subject to many recensions over a period of centuries,<sup>1</sup> and important sources describing the activities of the *Meshumad* often contain a variant reading of *Mumar*.<sup>2</sup> Since, as shall be shown, the Sages were referring to two different types of religious nonconformity, it becomes necessary in such cases to accept one of the readings. In the present study, the word *Meshumad* shall be regarded as the correct reading for all of the Tannaitic and Palestinian Talmud texts as is the word *Mumar* in all the texts of the Babylonian Talmud.<sup>3</sup> This decision is based on the following evidence:

1) Of the Talmudic literature, the Palestinian Talmud has been subjected to the least censorship. It is significant that the word *Mumar* is never found in the text of the Palestinian Talmud and that the word *Meshumad* is consistently used.<sup>4</sup>

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1. See W. Popper, *The Censorship of Hebrew Books*, Knickerbocker Press, 1899, and A. Haberman, מאמר על הדפסת התלמוד, Jerusalem, 1952.
2. For example, [מומר] מפילו ישראל משומד (Tos. Hullin I, 1); and האוכל הכל כשרין לשחוט . . . מפילו ישראל משומד [מומר] שקצים פרי זה משומד [מומר] (Tos. Horayot I,5); and elsewhere.
3. Henceforth, regardless of the reading in our printed editions, all cited texts in our study from the Palestinian Talmud or Tannaitic literature will contain the reading *Meshumad*, while all citations from the Babylonian Talmud will contain the reading *Mumar*.
4. This applies to the Krotchin edition of the Palestinian Talmud which is regarded as the most well preserved text.

ERRATA

Page 198, note 2, should read "...אחרי שכללנו..."

Page 199, line 3, should read "אחרי שכללנו"  
"אחרי"

Page 200, note 7, should read "See infra,  
pp. 214-227"

Page 201, line 10, should read "designated"

Page 202, note 14, end, should read "see infra  
pp. 218-220 for our discussion"

Page 203, note 19, should read "קולורדו"

Page 208, note 46, should read "Supra, p. 200"

Page 209, note 48, should read "Supra, p. 200"

Page 210, line 3, should read "Can"

Page 212, note 64, should read "Supra, pp 201-203"

Page 212, note 65, should read "Supra, p. 202"

Page 218, note 106a, should read "Supra, p. 202"

Page 220, note 106i, should read "Supra, p. 202"

Page 220, note 106j, should read "Supra, p. 202"

Page 222, note 108, should read "and Supra,  
pp. 213-214"

Page 226, note 130, should read "Supra, p. 200"

2) No Tannaitic or Palestinian Talmud source has a qualifying expression attached to the word *Meshumad*. Nowhere in this body of literature do we find categories such as the a) משומד לדבר אחד b) משומד לכול התורה כולה c) משומד c) משומד לכול התורה כולה d) להכעיס or the word *Meshumad* attached to any type of religious deviation such as a) לחלל שבת b) לערלות c) לאכול נבילות וטרפות d) לעבודה זרה, as we find in all of the above cases with regard to the *Mumar*. The word *Mumar* is clearly more semantically appropriate in the context.<sup>5</sup> The attached expressions indicate the extent or type of "change" evident in the nonconformists' life. The word *Meshumad*, on the other hand, connotes another type of defection. Furthermore, it is apparent that the Babylonian Talmud's *Mumar* is a different type of dissident than the Palestinian literature's *Meshumad*. The former might be considered an observant Jew in all respects but one, whose particular and proscribed nonobservance was motivated by "defiance" (להכעיס), or "pleasure seeking" (לתיאבון). The Palestinian Talmud records no such type behavior patterns, and the Tannaitic literature contains only one such reference which will presently be analyzed.

3) The word *Meshumad*, commonly used in Palestine, is undoubtedly, therefore, the correct reading in the Tannaitic Beraitot. We may account for the variant readings of *Meshumad-Mumar* in the Tannaitic texts owing to their inclusion in Babylonian Amoraic discussions. This explains why there are Tannaitic sources containing the word *Meshumad* without a variant reading of *Mumar*,<sup>6</sup> whereas there is no Tannaitic reading of *Mumar* which does not have a variant reading of *Meshumad*.

The above internal and external evidence supports the contention that only the reading of *Meshumad* is correct in the Palestinian Talmud and Tannaitic sources, while only the reading of *Mumar* is acceptable in the Babylonian Amoraic discussions.

It may be argued, however, that there is one other alternative, that the words *Mumar* and *Meshumad* are used interchangeably in both Talmuds as well as in the Tannaitic literature. Support for this thesis may be brought from the Amoraic discussions in the Babylonian Talmud on the Tannaitic texts in which we find the Amoraim using the *Mumar* appellation and behavior patterns while commenting

5. This observation was first made by S. Zeitlin in his excellent article "Judaism As A Religion", J.Q.R., XXV, No. 3, p. 306, note 629.

6. Such as in Mekhilta, ed. Lauterbach, Phila., 1949, Vol. III, pp. 163-164; and Sifra, ed. Weiss, p. 21b; and elsewhere.

on the Tannaitic halakha dealing with the *Meshumad*.<sup>7</sup> This would seemingly indicate that the dissidence involved is similar or that the correct reading in the Tannaitic source is *Mumar*.<sup>8</sup> Yet, as shall be shown, it is more likely that the Babylonian Amoraim were "reading-in" their categories of *Mumar* into the Tannaitic text.<sup>9</sup> This shall become more apparent when we analyze the sources relating to the *Mumar*.

Let us first determine how a person became *Meshumad*. The following parallel Tannaitic sources are revealing:

B.T., HORAYOT 11a	TOSEPHTA, HORAYOT I, 5
(b) ח"ר אכל חלב זהו [הרי זה] משומד ואיזהו משומד	(a) האוכל שקצים הרי זה משומד
(b) אכל [אוכל] נבילות וטריפות	(b) אכל נבילות וטריפות
(a) שקצים ורמשים	(a) שקצים ורמשים
(d) ושתה [והשותה] יי"נ	(c) האוכל בשר חזיר
(g) ר' יהודה [ר' יוסי בר' יהודה] אומר אף הלוכש כלאים	(d) והשותה יין נסך
(a) מיתביי אכל פרעוש אחד או יתוש אחד הרי זה משומד	(e) המחלל את השבת
	(f) המשוך [המנסך]
	(g) ר' יוסי בר' יהודה אומר אף הלוכש כלאים
	(i) ר' שמעון בן אלעזר אומר אף העושה דבר שאין היצר תאב לו

An examination of these sources reveals that 1) The Tosephta text is out of context with the preceding and succeeding Beraitot of the first chapter of Horayot;<sup>10</sup> 2) The Tosephta text is missing the phrase *איזהו משומד* which should precede the *אכל נבילות וטריפות*, וכר, 3) The Tosephta text is more elaborate, containing the categories of *המחלל את השבת*, *האוכל בשר חזיר המשוך (המנסך)*, and the additional comment of R. Shimon b. Elazar. The Beraita, however, preserves the category of *אכל חלב*.

7. See supra, pp. 21–31, for discussion on *Mumar*.
8. This is the contention of J. Petuchowski in his article, "The Mumar – A Study In Rabbinic Psychology", HUCA, XXX, p. 179, note 3.
9. By "reading in" we mean that the Babylonian Amoraim discussed the Tannaitic sources dealing with the *Meshumad* by utilizing the commonplace term used in Babylonia, *Mumar*. However, as we shall see, the *Mumar* and *Meshumad* were two different types of dissidents.
10. Both the halakhot preceding and following this Tosephta deal with the laws pertaining to verdicts, or decrees issued by the Beth Din, which makes our Tosephta halakha totally unrelated to the discussion in the chapter.

The above texts are apparently corrupt and they are, in reality, composites of several older Beraitot upon which the Tannaim are commenting. These older Beraitot described the nonconforming behavior which placed a Jew in the category of a *Meshumad*. Even without resorting to further textual analysis to determine the number of Beraitot involved, we may discern eight distinct acts which would classify a person as a *Meshumad*. They are:

- a) Eating insects and creeping things,
- b) Eating an animal which has died without proper ritual slaughtering,
- c) Eating the flesh of a swine,
- d) Drinking wine designate for heathen libations,
- e) Desecrating the Sabbath,
- f) Removing one's circumcision (mss. one who pours wine for heathen libations),
- g) Wearing garments of mingled materials (sha'atnez) and
- h) Eating prohibited fat.

To which R. Shimon b. Elazar adds "performing things (not specified) which the inclination does not entice you to perform."

It is hardly possible, however, to consider that these acts, in themselves, would constitute so flagrant a nonconformity as to label the perpetrator a *Meshumad*, for it will be clear from the sources that the *Meshumad* appellation was an opprobrium. The halakha singled him out for special consideration and he could not always participate in Jewish rites, as shall be seen. What act of religious nonconformity then was committed by the *Meshumad* which earned him this designation?

The Babylonian Amoraim would have a ready answer to this query. To them, there was no *Meshumad* category per se. They defined all of the Tannaitic references to *Meshumad* in terms of either the מומר להכעיס or the מומר לחיאבוק. If this were the case, then it would be plausible that a Jew who was defiant and spiteful in his nonconformity would be treated severely, and that if he were merely "pleasure seeking" the laws with regard to him would be less stringent. However, we do not find such categories of the *Meshumad* in the Tannaitic sources or Palestinian Talmud. What does this literature tell us concerning the *Meshumad*?

In commenting upon the verse "If any one of the common people (מעם הארץ) sin through error, in doing any of the things which the Lord hath commanded not to be done . . ." <sup>11</sup>, calling for a transgressor to bring a sacrifice as expiation for

11. Lev. IV, 27.



reasons: 1) We find no other Tannaitic or Palestinian Talmud source referring to a משומד לחלל שבת, or a משומד לנסך יין; 2) If the *Tosephta's* definition of the *Meshumad* is accurate, and a Sabbath desecrator, or a libation pourer is such a dissident, then the אמרו מכאן deduction of this Beraita is superfluous. The first part of the Beraita already excluded all *Meshumadim* from sacrificing the voluntary offerings. Nothing is learned from the repetition חוק מן המשומד לנסך יין ולחלל שבתות, even if there were such categories.

Furthermore, as shall be shown later, the Amoraim emended this text in order to refute Rav Anan who held that it was permissible for an idolatrous *Mumar* to slaughter. Yet, we find in the very group of beraitot collected by Rav Anan,<sup>18</sup> the Tanna D'be Eliahu, this beraita recorded as follows: מן הבהמה מן הבקר ומן הצאן . . . מכאן אמרו אין מקבלין מיני זבחים מרישעי ישראל בשביל להכניסן תחת כנפי ה' השכינה חוק מן המשומד והמנסך יין ומחלל שבתות בפרהסיא. It is obvious, therefore, that the original reading of the text contained the word *Meshumad*, and that the Amoraim used the beraita, after emending it, to introduce their views pertaining to the *Mumar*.

Yet, if we are to disregard the Amoraic emendation and still accept the *Tosephta's* definition of *Meshumad*, we must return to the original question and query why the *Meshumad* was enumerated in addition to, and apart from, the Sabbath desecrator and libation pourer in the Beraita. The solution may be found in perceiving the *Meshumad* to be a Jew who was alienated from Judaism in a more serious fashion than as a violator of any one of its laws. A *Meshumad* was not always a Sabbath desecrator, nor was a Sabbath desecrator always a *Meshumad*, notwithstanding the *Tosephta's* definition.

18. רב ענן היה רגיל אליהו דאחי גביה דהיה מתני ליה סדר דאליהו. B.T., Ketubot 106a.
19. Tanna D'be Eliahu, ed. Friedman. Wien, 1902. Chap. 7(6), pp. 35. The views of Rapoport, Zunz, Bacher and Oppenheim with regard to the date and authorship of this work are discussed in Friedman's introduction to this edition, as well as in *Jewish Studies In Memory of G.A. Kohut*, ed. by Salo Baron and Alexander Mark. New York, 1935, V. Aptowitz, "Seder Elia", pp. 5-39; in an unpublished Master's Degree manuscript entitled *Studies in Seder Eliahu*, S. Gossel, Yeshiva University, 1962; and in ספר אסף, בעריכת קאסוטו, קלמנר, מ. מרגולית, "לבעיה קדמותו של ספר אליהו" גוטמן, ירושלים, תשי"ג: מ. מרגולית, pp. 370-390. In general, the opinions may be summarized as follows: Zunz and Rapoport maintain that the Seder Eliahu text is not the same one referred to in our Talmudic passage. Bacher and Oppenheim take this work to be a product of the Geonic period. Friedman, however, despite these dissenting opinions, argues that our text is the one which was edited by the school of which Anan was the head.

We have already shown that a *Meshumad* was an אינו שב מידיעתו, that he wilfully and purposefully transgressed a specific law. Perhaps this is why he earned the title of an אינו מקבל ברית, one who does not receive or accept the covenant, for by virtue of his conduct he has nullified the covenant.<sup>20</sup> This is a serious accusation leveled against the *Meshumad*. It is not as serious as Zeitlin would have us believe who, by accepting a dubious reading in the Sifra text, charges that the *Meshumad* was considered an אינו בן ברית, not even a member of the Jewish people.<sup>21</sup> Nevertheless, the אינו מקבל ברית description of the *Meshumad* indicates that he is involved in dissidence of a broad nature.

There is only one source which actually records the heretical activity of a *Meshumad*. The text reads: בילגא לעולם טבעתה קבועה וחלונה סתומה מפני מרים בח בילגא שנשתמדה והלכה ונשא לטרדיוט אחד ממלכי יון וכשנכנסו יוונים להיכל באתה מרים וטפחה לה על גגו של מזבח אמרה לו לוקוס לוקוס אתה החרבתה את נכסיהם של ישראל ולא העמדתה להם בשעת צער<sup>22</sup>

"The course of Bilgah (I Chronicles XXIV. 14) was, always divided in the South since their ring was immovable and their alcove blocked up (these were penalties against the priesthood of Bilgah) because of Miriam, the daughter of Bilgah, who "became destroyed" (נשתמדה) and went and married an officer of the Greek kings and when the Greeks entered the sanctuary Miriam came and spread herself out on the top of the altar. She said to it, "Lukos! Lukos! (Name for Altar — Greek: Wolf) You have caused the destruction of the property of Israel and did not maintain them during the time of their sorrow."

Here we find two radical acts of nonconformity described, attributed to one who became a *Meshumad*, 1) Miriam intermarried with a Greek officer and 2) she displayed a gross disrespect for the sacrificial altar, an object which was considered sacred and inviolable by all of Jewry.

2) It must also be noted here that this incident took place, in Miriam's own words, בשעת צער, during a period of Israel's sorrow and trouble. It is doubtful that a person who was guilty of violating dietary laws, or wearing sha'atnez,

20. Sifra, ed. Weiss, p. 4b, ברית שהרי הפרו ברית מקבלי ברית שאינן מקבלי ברית שהרי הפרו ברית.

21. S. Zeitlin, *Jews: Race, Nation, or Religion*, Phil. 1936, p. 36, accepted the variant reading in the latter part of the Sifra text (Ibid.) ברית (מקבלי) בני] יצאו המשומדים שאינן [בני] (מקבלי) ברית and based his contention on this reading. But in doing so he overlooked the reference in the earlier part of the text to the *Meshumad* as an אינו מקבל ברית. Also comp. מנוקד ע"פ כתב יד רומי מנוקד, ed. Finkelstein, N.Y., 1957, folio II, which has a reading of ברית מקבלי and not ברית בני.

22. Tos. Sukkah, IV, 28; comp. B.T., Sukkah 56b; J.T., Sukkah 55d.

would be assigned the same appellation as one who was guilty of such extreme dissidence.

A possible solution may be found in the interesting usage of the term *נשחמדה*, which indicates that an act was performed which brought Miriam into the category of *Meshumad* and thence to her other acts of defiance. There are three other sources in which the root שמד is used as a verb describing an act, rather than in a nominal form.

In the Palestinian Talmud we read: נחרש או נשחטה או נשחמד או שהורו ב"ד: <sup>23</sup> This source reveals how quickly could one become a *Meshumad*. One minute we find a person setting aside a sin offering as expiation for his transgression, the next minute, נשחמד, he has become a *Meshumad*. The halakhic controversy as to whether the offering will ever be acceptable even if the *Meshumad* repents is not relevant to our present discussion. But it is significant that the source reveals that an act of being נשחמד was performed which changed the classification of the Jew.

The other two sources, perhaps, shed more light on the circumstances under which a Jew becomes a *Meshumad*. The first concerns an encounter between a *Meshumad* and two students of Rabbi Joshua: ויהי בהקשחה בלדתה וכו' שני תלמידים משל ר' יהושע שינו עטיפתם בשעת השמד פגע בהם אסטרוטיוט אחד משומד ושאל אם בניה אתם תנו נפשכם עליה ואם איך אתם בניה למה אתם נהרגים עליה אמרו לו בניה אנו ועליה אנו נהרגים [אלא שאין דרכו של בני אדם לאבד עצמו לדעת] אמר להם ג' שאלות אני שואלכם אם חשיבום הרי מיטב ואם לאו הרי אני משמד אתכם <sup>24</sup> The scene takes place during a שעת השמד, time of persecution. A Roman officer who was a *Meshumad*, and who was at one time, as we gather from his later conversation, an informed Jew, <sup>25</sup> threatened, that unless Rabbi Joshua's disciples would answer his questions, הרי אני משמד אתכם, he would cause them to become *Meshumadim*. Here, for the first time, we find suggested that an external agent or force might be responsible for a Jew becoming a *Meshumad*. This is also inferred in a Palestinian source dealing with the brothers Pappus and Lulianus, <sup>26</sup> who were told by

23. J.T., Gittin 48c; comp. J.T., Horayot 45d (end); and B.T., Zebahim 12b.

24. Genesis Rabbah, ed. Theodor, Berlin, 1929, LXXXII, 8, pp. 984-987, cf. notes.

25. Ibid. This officer was able to contradict Rabbi Joshua's students by saying: לא כך דרש ר' יהושע רבכם אלא אחד זה ואחד זה באומות העולם הכתוב מדבר.

26. For an interesting, brief biographical sketch regarding Pappus and Lulianus see S. Kraus' article in the Jewish Encyclopedia, Vol. IX, p. 512. See also Baron, *Social and Religious History of the Jews*, revised ed., N.Y., 1952, Vol. II, p. 96; and Finkelstein, L., *Miller Mem.* Vol., pp. 29-55.

the Romans in verbal exchange with them "... לא אתכוון משמדתהון", "We did not intend to cause you to become *Meshumadim*."<sup>27</sup> Even if the verb משמד used in both of the above cases involved only the act of persecution which did not change the status of the Jew, we are at least given a clue regarding the derivation and origin of the word *Meshumad*.

In this respect, the word משמד is identified with the periods of Jewish persecution which characterized Palestinian Jewish history, essentially during the reign of Antiochus, and, almost three centuries later, under Hadrian. Rabbinic literature is a replete with references to these times. Thus we read, for example: בראשונה גזור שמד ביהודה,<sup>28</sup> וירח ה' את ריח הניחוח... הריח ריח דודו של שמד,<sup>29</sup> and דשלחו מתם הזהרו במנהג אבותיכם זמנין דגורו המלכות שמדא ואחי לאקלולי<sup>30</sup> and בימי ר' זיורא היה שמדא וגזור דלא לתיבת בתעניתא.<sup>31</sup> Even if we agree with Lieberman who takes some of our historians to task for claiming that there were waves of religious persecution in Palestine during the third and fourth centuries,<sup>32</sup> we could not be far from wrong in stating that the Palestinian Jewish community even during that time was still smarting from the effects of prior persecutions and that the word משמד was the label used to describe such persecution. Even the early Geonim recorded: וכן וכן שגור אדום הרשעה שמד על ארץ ישראל שלא יקראו בתורה:<sup>33</sup> and אמר מר יהודאי ז"ל שגורו שמד על בני ארץ ישראל<sup>34</sup> Undoubtedly, persecutions were accompanied by a great deal of destruction, which accounts for the use of the word משמד, found so often in the Bible with just such a meaning.<sup>35</sup>

It is evident, too that, regardless of the political currents which were responsible for the persecutions, the efforts of the oppressors were directed towards stamping out all vestiges of religious observance among the Jews. Many of the Jews buckled under the strain of severe persecution and abandoned either all or

27. J.T., Sanhedrin 21b, line 16 and line 21. Krotoschin edition, 1886.

28. Genesis Rabbah, ed. Theodor, XXXIV, 9, pp. 319-320. See notes where Theodor identifies the "generation of persecution" with that of the Hadrianic period.

29. J.T., Gittin 25c.

30. B.T., Bezah 4b.

31. B.T., Taanit 8b, and Dikdukay Soferim on passage.

32. Lieberman, S., "Jewish Palestine In The Third and Fourth Centuries", J.Q.R., XXXIV, pp. 329-370.

33. Ginzberg, L., גנוי שעכסער, Jewish Theo. Seminary, N.Y., 1929, p. 561.

34. Ibid., p. 551.

35. See, for example, Micah V, 13, וישמדתי עריך; Jeremiah XLVII, 42, וישמד מראב מעם; Esther VII, 4, וישמד זמרי את כל בית בעשא; I Kings XVI, 12, להשמיד להרוג ולאבד; and elsewhere.

part of the Torah. Thus we read: אמר ר' יוסי בר חלפתא אם ראיית יעקב אחיך פירק: עולה של תורה מעל צוארו גזור עליו שמדים.<sup>36</sup>

But what was the Rabbinic policy towards those who abandoned Jewish practices during these difficult times? The Tosephta states it clearly and unequivocally: ואין לך דבר שעומד בפני פקוח נפש אלא שלשה דברים עבודה זרה וגלוי עריות: ושפיכת דמים במה דברים אמרו שלא בשעת השמד אבל בשעת השמד אפילו קלה שבקלות...<sup>37</sup> The Amoraic discussion pertaining to this statement<sup>38</sup> indicates that a Jew was required, during these periods of persecution to refrain from behaving in any manner which might be construed as an imitation of the Gentile. So much so, that אפילו לשנויי ערקתא דמסאנא, to change the Jewish manner of tying a shoestring was prohibited.<sup>39</sup> Obviously, there were all too many Jews who were anxious to lose their identity in those difficult times, and they endeavored to do so by emulating the non-Jew. Jacob Reifman's suggested emendation of the text to read לשרויי in place of לשנויי,<sup>40</sup> and his inference that the Rabbis prohibited only those acts which might be construed as idolatry is totally unfounded.<sup>41</sup> Any change in one's demeanor was viewed with suspicion and contempt by the Sages. Under such circumstances, then, a Jew who ate prohibited meat, or who poured libations, or who even wore sha'atnez, whether or not he did so spitefully or under external pressure, if he acted this way during a period of שמד, he could justifiably be called a משומד,<sup>42</sup> that is, one, who during the שמד, abandoned his faith, or part of it. Other derivations of the word *Meshumad* have been offered.<sup>43</sup> However, its usage in Rabbinic literature indicates that its origin is associated with the religious persecutions in Palestine.

Yet, this definition would require us, at times, to indict the entire Jewish nation. The intensity of persecution which is strikingly recorded by an Amora indicates

36. Genesis Rabbah, ed. Theodor, LXVII, 7, pp. 762-763; viz also notes.

37. Tos. Shabbat XV (XVI), 17, p. 134.

38. B.T., Sanhedrin 74a; b.

39. B.T., Sanhedrin 74b, So Rashi and Tosephot.

40. Beth Talmud, ed. Weiss - Friedman, בקורת ספר שאילתוח דרב אחאי גאון, J. Reifman, Wien, 1882, p. 146.

41. My revered teacher Dr. Samuel K. Mirsky, of blessed memory, made this observation.

42. Morphologically it would be a Pual, Perfect, following the pattern of מְהוּלָל, מְשׁוּבָח, מְקוּלָל, and מְקוּלָס.

43. See Aruch Completum, ed. Kohut, Vol. V, pp. 275-276, s.v. מְשׁוּמָד, where he suggests that the word may originate from the Aramaic שְׁמַדָא, curse. Others, he reports, associate the word Meshumad with two Syriac מְשׁוּמָד, which describes the process of immersing in holy water.

that martyrdom was not always a clear alternative to abandonment of Jewish observance. His statement is: אמר ר' חייא בר אבא אם יאמר לי אדם תן נפשך על קדוש שמו של הקב"ה אני נותן ובלבד שיהרגוני מיד. אבל בדורו של שמד איני יכול לסבול...<sup>44</sup> Since, under these circumstances, whole masses of Jews must have succumbed to the pressures of persecution, it could not be those who forsook all or part of Judaism during the crisis who were labeled *Meshumadim*. It is more feasible to presume that it was those who, when the crisis passed, refused to reaccept the yoke of the Law. A *Meshumad*, in this sense, was certainly an אינו שב מדיעתו and, for that matter, an אינו מקבל בריה, for then his persistence in rejecting even one law of the Torah served as an indication that he wished to alienate himself from the Jewish people, and from the Covenant which bound them together. Such a one, who preferred not to share the lot of the Jewish people could prove his disassociation, at times by eating prohibited food, at times by pouring wine libations and at times by desecrating the Sabbath. Extremists, such as Miriam, intermarried and, probably in order to prove her total alienation from Judaism, trampled the holy altar. Whether or not the *Meshumad* abandoned Jewish observance out of conviction, or out of fear lest persecutions resume, is difficult to ascertain. But there is not enough evidence to support the suggestion that a *Meshumad* was one who converted to another religion.<sup>45</sup> And certainly the Tosephta's definition of *Meshumad* contradicts such a thesis.<sup>46</sup>

The present writer's opinion that a *Meshumad* was one who separated himself from the Jewish people by transgressing part of the laws which might serve as proof to the oppressor that he had abandoned his faith in order not to share their fate in times of persecution solves the following problems:

1) It accounts for the term *Meshumad* in the Palestinian literature and its absence in the Babylonian literature, for the Babylonian Jewish community did not live under the threat of persecutions as did its sister community. As it is recorded: ואותן בני ישיבות לא ראו שבי ולא שמד ולא שלל ולא שלט בהן לא יין ולא אדם: ... והוציאן הקב"ה י"ב שנה קודם חורבן ירושלים בתורתן ולמחן...<sup>47</sup>

2) It accounts for the absence of qualifying expressions attached to the word *Meshumad*, such as לחלל שבת, לדבר אחד, לחיאבוק, להכעיס. The Sages were

44. Song of Songs Rabbah on Song of Songs II, 7.

45. S. Zeitlin, op. cit., p. 36, and notes.

46. Supra, p. 3.

47. Tanhuma, Noach III, Lublin, p. 18.

essentially concerned with the *Meshumad's* ultimate motive which was to avoid persecution by discarding Jewish observance. Furthermore, as we shall soon see, in the eyes of the halakha, no differentiation can be found in all of the Tannaitic literature and in the entire Palestinian Talmud which distinguishes one *Meshumad* from another. In other words, we cannot find any leniency with regard to a *Meshumad* who transgresses only one law even if he does so for the sake of pleasure, nor any stringency in the case of a *Meshumad* who is spiteful in his dissidence and forsakes his entire religion. Indeed, even Rabbi Shimon b. Elazar's addition in the Tosephta, אף העושה דבר שאין היצר תאב לו,<sup>48</sup> regardless of which specific beraita he is commenting upon, points to the fact that a *Meshumad* cannot be categorized according to his "pleasure seeking" tendencies.

3) It accounts for the Tosephta's definition of *Meshumad* which involves the transgression of one law, and, at the same time, we can understand how Miriam could also be included in this category.

4) It accounts for all of the verbal forms of the word שמד whether it involves the application of external force, or the committing of an act by which one became a *Meshumad*, that is, a transgression committed to avoid persecution, be it immediate or impending.

It now remains for us to examine the status of the *Meshumad* within the Jewish community as delineated by the halakha. Was he denied the right to function as a Jew in the congregation of Israel? Was he considered a Jew? We will find an ambivalence in the sources with regard to the *Meshumad*. In some respects, he was wholly considered a Jew. Other sources point to a complete loss of status within the community.

Although, as we have indicated, the *Meshumad* label was an opprobrium, a term applied to a person who wished to avoid the painful consequences which a Jew adhering to Judaism living in Palestine could expect, yet, do we find the halakha preserving his rights as a Jew. The following Tosephta makes it clear that a *Meshumad* was not to be regarded otherwise: הכל כשרין לשחוט אפילו כוחי ואפילו ערל ואפילו ישראל משומד שחיטת המין עבדת זרה ושחיטת הגוי הרי זו פסולה ואפילו ערל ואפילו ישראל משומד שחיטת הקוף הרי זו פסולה<sup>49</sup> Here we find that a *Meshumad* is permitted to perform ritual slaughtering, while it is prohibited to a non-Jew and even to a *Min*, a Jewish sectarian. The use of the word כשרין rather than the word מותרין serves to in-

48. Supra, p. 3. See also 1973 edition, Jerusalem, by Adin Steinsaltz. המכח הישראלי לפרסומים. תלמודיים. where the text reads משומדות and not המרת דת.

49. Tos. Hullin I, 1.



a non-Jew.<sup>56</sup> The beraita points out that the "brother" mentioned in the Bible refers also to a *Meshumad*.<sup>57</sup> This is supported by the Palestinian Talmud which states: "א"ר אבון גר ומשומד משומד קדם, that the property of the *Meshumad* is to be returned prior to the property of the גר, a resident alien.<sup>58</sup> In fact, this halakha is used to challenge a beraita which states: העובדי כוכבים ורועי בהמה דקה לא מעלין ולא מעלין מורדין אלא מעלין<sup>59</sup> which implies that a Jew was not required to exert himself to save a *Meshumad*, and was actually urged to intimidate him. The contradiction is apparent. While it is possible that the word משומדים is an addition to the beraita text, even as the manuscript of its *Tosephta* parallel substantiates,<sup>60</sup> the fact that the Babylonian Talmud was urged to reconcile the contradiction by saying: סמי מכאן מומר ולישני ליה כאן כאן: מומר אוכל נבילות לתיאבון כאן במומר אוכל נבילות להכעיס indicates that their text contained the word.<sup>61</sup> If so, the contradiction requires an explanation in the light of our analysis of the *Meshumad's* dissidence.

The *Meshumad*, by persisting in his nonobservance of Jewish law, especially for the reasons heretofore described, separated himself from the Jewish people. He was still a Jew, but this did not require the Jewish community to establish congenial relationships with him. His Jewish rights were protected, as we have seen. And a Jew was even required to return a lost article to him. Yet, as even the *Mekhilta* points out, it was the obligation of a finder to return an article to its rightful owner regardless to whom it belonged. So we read in connection with the verse: "If thou meet thine enemy's ox or his ass go astray, thou shalt surely bring it back to him again":<sup>62</sup> שור אויבך רבי אשיה אומר זה הוא גוי עובד אלילים וכן מצינו . . . שהגוים קרוים לישראל אויבים בכל מקום שנאמר כי תצא למלחמה על אויבך רבי אלעזר . . .<sup>63</sup> אומר בגר שחזר לסורו הכתוב מדבר ר' יצחק אומר בישראל משומד הכתוב מדבר . . . The *Meshumad* was thus grouped in a category together with the idolatrous heathen and the backsliding convert to Judaism, as an "enemy". This law, in reality explains the beraita which states that a Jew was encouraged to intimidate

56. B.T., Baba Kama 113b לכל אבידת אחיך לאחיך אתה מחזיר ואי אתה מחזיר לכנעני.

57. B.T., Avodah Zarah 26b המשומד אח לרבות אח המשומד.

58. J.T., Horayot 48b.

59. B.T., Avodah Zarah 26a; b; Comp. Tos. Baba Metzia, Chap. II, end.

60. See *Tosephta*. Ibid. Zuckerman, p. 375, notes.

61. B.T., Avodah Zarah 26b.

62. Exodus XXIII, 4.

63. *Mekhilta*, ed. Lauterbach, Vol. III, pp. 163-164.

(מורידין ולא מעלין) the *Meshumad* in his personal relationships with him. And, as we shall now see, this accounts for the ambivalence in Jewish law with regard to the *Meshumad*. The halakha never denied his rights as an individual Jew, but when it came to the Jewish community, he was excluded from participating in communal rites.

It is clear, however, that although he was prohibited from offering certain sacrifices, it is not because he lost his status as a Jew. In the case of the sin offering,<sup>64</sup> it could not be expected that his sacrifice would be accepted in view of his persistence in transgressing all or part of the law. The same applies to the voluntary sacrifices.<sup>65</sup> These were private offerings which were brought as expressions of gratitude, or in order to achieve spiritual communion with the Almighty.<sup>66</sup> Even non-Jews were permitted to bring such sacrifices.<sup>67</sup> Thus, the offering of these sacrifices becomes a matter of *privilege* rather than *right*.<sup>68</sup> When the *Meshumad* was denied this *privilege* because "The sacrifice of the wicked is an abomination,"<sup>69</sup> it was because he was deemed unworthy of this privilege and not because he was being denied his right as a Jew.

In yet another case pertaining to sacrifices, we find that the *Meshumad* was barred from partaking of the Paschal lamb. Commenting on the verse "no alien shall eat thereof"<sup>70</sup> the Mekhilta states: אחד ישראל משומד ואחד גוי במשמע.<sup>71</sup> The *Targum Onkelos*, in accordance with this law, translates as בן נכר בר ישראל.<sup>72</sup> Neither a non-Jew, nor a *Meshumad* was permitted to partake of the Paschal lamb. Seemingly, it would appear that the two have been placed in the same category. However, this is not the case. The Scriptures tell us that an uncircumcised Jew also could not eat the Paschal lamb.<sup>73</sup> This applies even to the most pious Jew who fulfilled every Biblical dictum, but, who could not be circumcised owing to the fact that his brothers had died from the loss of blood during their circumcision.<sup>74</sup> This indicates that a Jew was not barred from participating

64. *Infra*, p. 5.

65. *Infra*, p. 6.

66. Rashi on Lev. I, 2, s.v. אדם כי יקריב מכם. See also שפתי חכמים.

67. B.T., Hullin, 13b. איש איש מבית ישראל לרבות עכו"ם.

68. Sifra, ed. Weiss, p. 4c. יכול גורה, תלמוד לומר יקריב אינו אלא רשות.

69. Proverbs XXI, 27; also J.T., Sanhedrin 29d.

70. Exodus XII, 43.

71. Mekhilta, ed. Lauterbach, Vol. I, p. 118.

72. Targum Onkelos on Exodus XXIII, 43.

73. Exodus XII, 48.

74. Rashi on Exodus XII, 48, s.v. שמתו אחיו מחמת מילה וכל ערל שמתו אחיו מחמת מילה. להביא את שמתו אחיו מחמת מילה וכל ערל שמתו אחיו מחמת מילה. שאינו מוסר לערליו.

in this rite because he had lost his status as a Jew. But just as the lack of circumcision physically separated the uncircumcised Jew from his brethren, so, too, did the conduct and motives of the *Meshumad*, separate him spiritually from his brethren. The Paschal lamb is a קרבן צבור which accentuates the unity of the people of Israel, physically, by virtue of the covenant of circumcision, and spiritually, in the desire of the members of the nation to share a common destiny. Because of this, the *Meshumad*, as well as the uncircumcised, could not join the community in eating the Paschal lamb.

There is, finally, one other law which seems to contradict our thesis. The Palestinian Talmud states: משומד בגלוי פנים הרי הוא כגוי לכל דבר, that a brazen *Meshumad* is considered as a non-Jew in every respect.<sup>75</sup> Upon further investigation, however, it will become apparent that this dictum was very limited in scope. The Talmud in two places explicitly remarks that the statement הרי הוא כגוי לכל דבר refers to the laws pertaining to *Erub*.<sup>76</sup> A *Tosephta* states that only a Sabbath observer, at least one who publicly observed the Sabbath, was permitted to participate in the making of an *Erub* and only such a person could be מבטל רשות,<sup>77</sup> i.e., if he did not desire to participate in the *Erub* he could make his property null and void. In this respect, a *Meshumad* was no different from, any other Jew. As the beraita records: ישראל משומד משמר שבתו בשוק מבטל רשות ושאינו משמר שבתו בשוק אינו מבטל רשות.<sup>78</sup> Yet, another beraita substantiates this position by stating: דתניא משומד וגלוי פנים הרי זה אינו מבטל רשות.<sup>79</sup> And with the Talmud's interpolation of this latter beraita our problem becomes resolved. The Talmud states: גלוי פנים משומד הרי אלא משומד בגלוי פנים אינו יכול לבטל רשות.<sup>80</sup> In the light of this analysis, it is obvious that the Palestinian Talmud's statement that "a brazen *Meshumad* is like a non-Jew" refers *only* to his ability to be a מבטל רשות, and that, with regard to this law, he was in the same category as a non Jew, or even a

75. J.T., Erubin 24b.

76. B.T., Hullin 6, in reference to a Cuthite: מאי עובדי כוכבים נמורים אמר ר"ג בר יצחק לבטל רשות ולשאר כל דבריו הרי הוא כעובד: גר תושב: B.T., Abodah Zarah 64b, in reference to a Cuthite: מאי עובדי כוכבים אמר ר"ג בר יצחק לא ליתן רשות ולבטל רשות.

77. *Tosephta*, Erubin VII (5), end, p. 147. ישראל משמר שבתו בפרהסיא אינו צריך לבטל רשות ושאינו משמר שבתו בפרהסיא צריך לבטל רשות.

78. B.T., Erubin 69b.

79. B.T., Erubin 69a.

80. *Ibid.* Although the printed edition has מומר, the reference is obviously to the beraita which deals with *Meshumad*.

Jew who did not admit that the *Erub* transaction was legally valid.<sup>81</sup> Certainly, however, his status as a Jew was not being challenged. The erecting of an *Erub* was a *privilege* accorded to a group composed of individuals who considered themselves part of the group ethnically, sociologically, and, especially, ideologically, pertaining to the observance of Sabbath.

Our description of the *Meshumad's* dissidence is complete. Whether or not the *Meshumad* category was included in the ברכת המינים of the Eighteen Benedictions is difficult to ascertain.<sup>82</sup> Two of the three oldest extant manuscripts of the *Seder R. Amram*, contain the word למשומדים, while the other has the word למלשינים.<sup>83</sup> Since, however, both informers and *Meshumadim* were thorns in the side of the Jewish community, the prayer could have been directed against either one:

We have thus seen that the common conception of a *Meshumad* as being an apostate or convert is not justified on the basis of a complete examination of the sources. It now remains to compare this dissident with the *Mumar* non-conformist.

The task involved in defining and describing the *Mumar* and the type of dissidence with which he was charged is exceedingly complicated by virtue of the multiplicity of *Mumar* categories found in the Babylonian Talmud. In this respect, at least, the *Mumar* type of religious non-conformity is much more complex than that of the *Meshumad*. The following categories of *Mumar* may be discerned in the Babylonian Talmud:

- 1) מומר להכעיס<sup>84</sup>
- 2) מומר לחיאבון<sup>85</sup>
- 3) מומר לכל התורה כולה<sup>86</sup>
- 4) מומר לדבר אחד<sup>87</sup>

81. Mishna Erubin VII. I הדר עם עו"ג בחצר או עם מי שאינו מודה בערוב הרי זה אוסר עליו

82. B.T., Berahot 28b. For a discussion on the Eighteen Benedictions, see Elbogen's article in the *Universal Jewish Encyclopedia*, IV, pp. 27-32; and Finkelstein, L., "Development of the Amidah", J.Q.R., XVI, pp. 1-43: 127-170.

83. See *Seder R. Amram*, ed. Hedegard, D., Sweden, 1951, pp. 93-94, and in the Hebrew, ז"ל, note 12.

84. B.T., Sanhedrin 27a.

85. Ibid.

86. B.T., Hullin 4b.

87. Ibid.

- 5) מומר לאותו דבר<sup>88</sup>
- 6) מדאורייתא מומר<sup>89</sup>
- 7) בדרבנן מומר<sup>90</sup>
- 8) מומר לחלל שבת<sup>91</sup>
- 9) מומר לעבודה כוכבים<sup>92</sup>

Now, whereas the post Talmudic halakha contains an abundance of laws relating to the *Mumar*,<sup>93</sup> our discussion shall be essentially limited to the use of Talmudic sources. The discussion of the commentaries on the passages, and the statements of the codifiers of Talmudic law pertaining to the *Mumar* will have little bearing on our study.

The word מומר is a *Hophal* of the root מור, which means "to change."<sup>94</sup> The verb, as a description of a person, is not entirely unrelated to its usage pertaining to the act of substituting another beast in the place of that which was first assigned for an offering. Thus we read: הכל ממירים אחד אנשים ואחד נשים לא שאדם רשאי להמיר אלא שאם המיר מומר<sup>95</sup>

The *Mumar*, too, was a "changed" person. The word does not connote a change of religion as implied in Jeremiah's usage, ההמיר גוי אלקים.<sup>96</sup> The appellation was used to describe dissident behavior on the part of a Jew, who, apparently had "changed" insofar as a particular prescribed norm of Jewish observance was concerned.

It is quite understandable, therefore, why we find the Babylonian Amoraim "reading into" Tannaitic halakhot dealing with *Meshumad's* description of the religious nonconformity of the *Mumar* with which they were concerned. Outwardly, the transgression of the *Meshumad* and the *Mumar* might be viewed as identical. In terms of overt dissidence, both the *Meshumad* and the *Mumar* could be guilty of a total abandonment of Jewish performance, or they could have persisted in violating one law. But, the motives and the circumstances which

88. Ibid.

89. B.T., Horayot 11a.

90. Ibid.

91. B.T., Erubin 69b.

92. Ibid.

93. See, for example, פחד יצחק, s.v., מומר.

94. Arùkh Completum, ed. Kohut, Vol. V, p. 165.

95. Mishna Terumah I,1.

96. Jeremiah II,11.

precipitated their behavior were entirely different. Indeed, the Palestinian *Meshumad* fits precisely Maimonides' description of the מומר לכל התורה כולה as explained by the *Keseph Mishneh*:<sup>97</sup>

"A *Mumar*, with regard to the whole Torah, is such as they who return to the religions of the idol worshippers during the time that decrees are issued (against the Jews), and he cleaves unto them and says, "What profit is there to cleave unto Israel, seeing that they are humbled and persecuted. It is better for me to cleave to those in power."<sup>98</sup>

And this is probably the way which the Amoraim viewed the *Meshumad*, whether he abandoned all or part of the law, if he did so for the purpose of removing himself from the orbit of Israel's destiny.

Fortunately, however, the Jewish community in Babylonia was not faced with the same problem. They, undoubtedly, had their share of nonconformists, whom they could not appropriately call *Meshumadim*, even though their transgressions might be identical. Since שׂמך could not be considered a motive for violating the law, owing to the fact that the Babylonian Jewish community was not subjected to religious persecutions, the Babylonian Sages sought a new identification for dissident and they called him a *Mumar*, i.e., "the changed one." They, however, were required to classify this type of nonconformity, according to motives and extent, into sub-divisions. Since almost the entire literature in the Babylonian Talmud dealing with the *Mumar* concerns his status within the framework of the halakha, the logical starting point in Tannaitic literature for such discussion would be with the laws pertaining to *Meshumad*, for no other transgressor in Tannaitic times so closely resembles the *Mumar* in overt action as does the *Meshumad*. Yet, such discussions notwithstanding, the *Meshumad* and the *Mumar* were, in reality, two different types of nonconformists.

It is not a simple matter to precisely describe the *Mumar*. This is so not only because there are several categories of *Mumar* which require analysis, but also because the Amoraim never offered a clear-cut definition of his status and

97. In defending Maimonides against the Rabad who criticized the Rambam by stating that, in reality, a Jew who "returns to the religion of the idolators" is a Min, and not a Mumar, the *Keseph Mishneh* explains that the Mumar example offered by Maimonides implies that the heretic only gives the appearance that he has associated with another religion for the purposes of escaping oppression without having actually been converted.

98. Maimonides. *Laws of Repentance* III,9.

standing within the community. Thus, we do not know how many times a Jew had to transgress a law before he was placed in the category of a *Mumar*. And, too, the Amoraim were involved in very basic controversies as to whether a "defiant *Mumar*" (מומר להכעיס) was to be considered a *Mumar* or a *Min*,<sup>99</sup> whether an "appetitive *Mumar*" (מומר לחיאבן) could offer testimony in cases involving money;<sup>100</sup> whether even an idolatrous *Mumar* was to be considered a *Mumar* with regard to the entire Torah.<sup>101</sup> Furthermore, there are many areas in Jewish law, such as with regard to divorce, levirate marriage, and inheritance, where inclusion in the *Mumar* category could alter aspects of the case, which are not treated in the Talmud at all. Finally, since as previously indicated, the discussions concerning *Mumar* were primarily limited to halakhic evaluations of his status, it is difficult to determine from them sociological relationships which existed between the *Mumarim* and the Babylonian Jewish community.

Yet, we are not entirely in the dark. The existence of a category מומר לכל התורה כולה implies that there were Jews who completely abandoned the Jewish way of life. Nowhere, however, is it implied that this *Mumar* did so for the purpose of accepting another religion. If a parallel may be brought from modern times, we know of persons who are not observant, Jewishly, who are non practicing Jews, yet they have not accepted another religion. As a matter of fact, many of them still very much consider themselves Jews. The מומר לכל התורה כולה was probably just such a person, to be distinguished from the *Min*, who was a sectarian and denied the legitimacy and authenticity of what had become "normative" Judaism.<sup>102</sup> Yet, regardless of how the *Mumar* considered himself, the Jewish community treated him as though he were "beyond the pale", and as we describe the other forms of *Mumarim* who were likened to a "*Mumar* with regard to the

99. B.T., Abodah Zarah 26b.

100. B.T., Sanhedrin 27a.

101. B.T., Hullin 4b.

102. This is the contention of S. Zeitlin in his commentary on II Macc. VI, 24, *The Second Book of Maccabees*, ed. Zeitlin, N.Y., 1954, p. 157. See also his "Judaism As a Religion". JQR, 1945, p. 306. But a careful reading of the text will reveal that the concept of מומר meaning "changing religions" is not there implied, but it is as the Vulgate renders, "transisse ad vitam alienigenarum", "had gone over to the life of the heathen."

103. Although the *Min* was treated by the halakha as though he were beyond the Jewish fold, this does not imply that he was not considered a Jew. Nowhere in Rabbinic literature is there evidence that a born Jew, or even a Gentile converted to Judaism, was able to lose this identification.

entire Torah," and their halakhic status, his position with the community will become clearer.

There were two fundamentals of the Jewish faith, Sabbath observance and the rejection of idolatry, commitment to which was regarded as a *sine qua non* for Jewish identification. Repeated transgression of these commands rendered the violator a "*Mumar* with regard to the entire Torah." Hence, in commenting on the beraita dealing with the voluntary offerings, which states: *מכם ולא כולכם*, להוציא את המשוּמַד, the Amoraim concluded that this referred to a "*Mumar* with regard to the entire Torah," and they emended the latter half of the beraita to read *חַוּץ מִן הַמּוֹמֵר לִנְסֹךְ אֶת הַיַּיִן וְלַחֲלֹל שַׁבְּתוֹת בְּפִרְהֵסְיָא* which indicated that the Sabbath desecrator and the idolatrous libation pourer were to be considered as a "*Mumar* with regard to the entire Torah" and, hence, prohibited from bringing such sacrifices.<sup>104</sup>

This discussion was brought as a refutation to Rab Anan who held that even an idolatrous *Mumar* was not to be considered a *כולה* התורה כולה, and, who, furthermore, quoted the Amora Samuel to the effect that one was permitted to eat of the ritual slaughtering of the idolatrous *Mumar*.<sup>105</sup> Now, although the *Min*, too, was charged with idolatry, it seems that the idolatrous *Mumar*, was not considered a *Min* because he lacked his intensity and conviction,<sup>106</sup> or because he did not submit to another sectarian discipline. Thus, even an idolatrous *Mumar* was not excluded from the community although he was regarded as a *כולה* התורה כולה.

At this point, it becomes necessary to discuss the text of the *Midrash Hagadol*, already quoted,<sup>106a</sup> for the compiler of this work has collected many authentic beraitot not found in either the Babylonian or Palestinian Talmud. Here we have a text which utilizes the *מכאן אמרו* expression as if it is quoting another Mishna or beraita, yet which actually combines, in an unusual fashion, the beraita in *Hullin*,<sup>106b</sup> with the statement of the *Sifra*.<sup>106c</sup> This source, if authentically Tannaitic or even Amoraic challenges this writer's thesis on the following grounds: 1) In it we find the expressions *משומד לאכול גבילה* and *משומד לע"ז*

104. B.T., Hullin 51; B.T., Erubin 69b.

105. B.T., Hullin 4b.

106. Rashi, B.T., Hullin 13b, s.v. *מין*, states: *זה האדוק בעבדת כוכבים ואין ישראל חמור ממומר לעבדת כוכבים שהמין אדוק בה וכל משבותיו לה*.

106a. *Infra*, p. 37, note 14.

106b. Hullin 5a.

106c. *Sifra*, ed. Weiss, p. 21b.

לתיאבן which we have considered implausible in a Tannaitic text; 2) If it is an Amoraic source than the expressions should appropriately read מומר לאכול גבילה and מומר לע"ז לתיאבן. However, after further analysis it will be shown that the text is neither Tannaitic nor Amoraic in origin.

Notwithstanding L. Finkelstein and others,<sup>106d</sup> who claim great authenticity for the beraitot of the *Midrash Hagadol*, many agree that the compiler also relied on Maimonides for many texts. Thus, Rabinovitz, in his preface to his edition of the *Midrash Hagadol* on Leviticus states: לפעמים יביא בעמה"ג את דברי הרמב"ם ברשימת תנן או ת"ר כאלו הם דברי המשנה או ברייתא. יש אשר יביא את דברי הרמב"ם במכאן אמרו כמו שיביאו את דברי המשנה במדרשי תנאים.<sup>106e</sup> Now although Rabinovitz neglected to make this suggestion, it is obvious that the source presently under consideration has its origin in the following text found in the *Yad*: ישראל שהוא מומר לע"ז או מחלל שבת בפרהסיא אין מקבלין ממנו קרבן כלל אפי' העולה שמקבלין אותה מן העכויים אין מקבלין אותה מן המומר הזה שנאמר אדם כי יקריב מכם ולא כולכם להוציא את המומר. אבל היה מומר לשאר עבירות מקבלין ממנו כל הקרבנות כדי שיחזור בתשובה. היה מומר לעבירה והוא מפורסם וידוע לעשותה והורגל בה בין להכעיס בין לתיאבן אין מקבלין ממנו קרבן לאותה עבירה כיצד היה רגיל לאכול חלב בין להכעיס בין לתיאבן ואכל חלב והביא חטאת אין מקבלין אותה ממנו.<sup>106f</sup>

It is also interesting to note that the text of the *Meiri* and the *Midrash Hagadol* are somewhat comparable. The *Meiri* reads as follows: משומד לע"ז או לחלל שבת בפרהסיא הרי הוא פחות מן הגוי ואין מקבלין ממנו שום קרבן ואם היה משומד לשאר עבירות מקבלין ממנו כל קרבן הואיל ואינו משומד לכל התורה ומכל מקום באותה עבירה עצמה שהוא משומד בה אין מקבלין ממנו ר"ל שאם הוא משומד לאכול חלב במזיד הן לתיאבון הן לדרך פירוק עול הן להכעיס ואירע הדבר שאכלו עכשו בשוגג ורצה להביא קרבן על זה אין מקבלין ממנו אחר שאינו שב מידעתו אבל משומד לאכול חלב שהביא קרבן על הדם מקבלין ממנו וכל כיוצא בזה.<sup>106g</sup> A careful evaluation of all the texts will reveal that, in all probability, the *Meiri* paraphrases the *Rambam* adding his own

106d. L. Finkelstein, "Studies In Tannaitic Midrashim," Proceedings of the American Academy For Research, Vol. I, 1935, pp. 189-222. Also see Finkelstein's "Prolegomena To An Edition of the Sifra on Deuteronomy," (*Ibid.*, Vol. III, 1932, pp. 3-42) where he attempts to demonstrate the older origin of the *Midrash Hagadol* sources. 1. אל הספן שמות השתמש בעמה"ג בהרמב"ם לא רק בהבאת הלכותיו ב"מכאן אמרו" אלא אף בצורת מדרש על פי לשון הרמב"ם.

106e. *Midrash Hagadol*, Lev., op. cit. Note also Epstein-Melamed's remark (*Mekhilta D'Rabbi Shimon ben Yochai*, Jerusalem, 1955, p. 54). Margulies (*Midrash Hagadol*, Exodus, Jerusalem, 1956, p. 7) also agrees with this position.

106f. Maimonides, *Yad*, Maasay Korbanot III, 4.

106g. Beth Habechirah on Hullin, Hameiri, N.Y., 1945, p. 25.

interpolation, and that the compiler of the *Midrash Hagadol* had before him the *Meiri* text.<sup>106h</sup> At any rate, it is obvious that the *Midrash Hagadol* text is neither authentically Tannaitic nor Amoraic.

It remains to be determined, however, the source for Maimonides' statement. But it is not puzzling to learn that the Rambam accepted the Amoraic emendation of the Tannaitic text pertaining to *Meshumad*,<sup>106i</sup> combined it with a *Sifra* quoted in the Talmud,<sup>106j</sup> and codified the conclusion of the Amoraic discussion concerning this law,<sup>106k</sup> that it was not permissible to accept sacrifices from various types of *Mumarim*. However, that statement of Rambam came to us as somewhat of an anomaly since, while the Amoraim were discussing the *Mumar*, the source as we find it in the *Yad* in manuscript form,<sup>106l</sup> contains the word *Meshumad* wherever our editions read *Mumar*. While we maintain that expressions such as *משומד לע"ו* and *משומד לאכול נבילה* are inappropriate in a Talmudic context, how can we account for them even in post-Tannaitic sources, since we do find similar readings in the early commentaries of the Ramban,<sup>106m</sup> and the *Meiri*,<sup>106n</sup> for example. The fact that the preponderance of extant manuscripts of the works of the early commentators contain the *Mumar* reading is not, in itself, proof that the correct reading in the post-Talmudic texts should be *Mumar*. Is it not possible that all original texts read *Meshumad*, and that the censor, owing to his distaste for that particular word, changed the sources to read *Mumar*? Has not this tendency been evidenced by our comparison of the older and later Rambam manuscripts? Moreover, is it not conceivable that the word *Mumar* is not existent even in the Talmudic texts,<sup>106o</sup> and that the censor changed all Talmudic readings from *Meshumad* to *Mumar*? The latter suggestion would account, of course, for the various readings among the early commentaries, in that the commentators either used or did not use a Talmudic text modified by the censors.

106h. I am grateful to Dr. Samuel K. Mirsky for enlightening me with regard to the problem of the *Midrash Hagadol* and the corresponding analysis.

106i. *Hullin* 5a, *Supra*, pp. 6-7.

106j. *Supra*, pp. 5-6.

106k. *Hullin* 5a.

106l. Photostat of the *דפוס דומי ר"ם*, Jerusalem, 1955, p. 388.

106m. Ramban on *Hullin* 5a.

106n. Beth Habechirah on *Hullin* 5a.

106o. For example, the earliest manuscript available of Abodah Zarah (published by S. Abramson, JTS, N.Y., 1957) contains the word *Meshumad* (26b) in place of *Mumar*. Also see variant readings brought by Dikdukay Soferim on passages.

As for the Talmudic texts, the contention that the censor had substituted the word *Mumar* for *Meshumad* is untenable for the following reasons: 1) It implies that the censors coined the word *Mumar*, which, when they began their infamous work, had no such connotation, and employed it as an appropriate replacement for the word *Meshumad*. While this could have been done to the commentary manuscripts, if the censors found that the word *Mumar*, which was already used in the Talmud, less distasteful than *Meshumad*, it is illogical to assume that the word *Mumar* was nonexistent until the censor began changing texts. This argument applies with the same cogency even if we were to assume that the censors themselves were Jewish and that they desired to employ a term which was less of an opprobrium in order to please the Gentiles. To assume that they would coin a word for this purpose is beyond the realm of feasibility, since it would have no significance for the Jewish community. 2) The Amoraim would never have used the incomprehensible expression *משומד לחיאבן*, which implies that a person was a victim of persecution "for pleasure," or the phrase *משומד לדבר אחד*, since the word *Meshumad* connotes a total alienation. It is possible, however, that the commentaries were not concerned with the distinction between the two terms since, at any rate, the Talmudic discussions pertaining to *Mumar* always centered about the Tannaitic source dealing with *Meshumad*, and that they interchanged the two appellations resulting in combinations and expressions never found in the Talmud itself. 3) We have seen that the Palestinian *Meshumad* and the Babylonian *Mumar* were two different personalities and were involved in different types of nonconformity. It is more plausible to suggest that the Sages distinguished between the two by endowing them with separate appellations. Again, such distinctions were not of cardinal importance to the commentaries. 4) Finally, we may logically ascribe the existence of the word *Meshumad* in manuscripts of the Babylonian Talmud and early commentaries to scribal errors, as well. Whereas, to assume that the word *Meshumad* is the correct reading in all Talmudic texts is to credit the censors with too overwhelming a success in the performance of their duties, for indeed, we find no inference among such commentators as Rashi and the Tosaphists that their own Talmudic manuscripts, which contained the word *Mumar*, were tampered with.

As to the Sabbath desecrator, it is interesting to note that a distinction was made between a *Mumar* who desecrated the Sabbath in public, and one who did so only in his private domain, and only the former was considered a "*Mumar* with regard to the entire Torah."<sup>107</sup> The distinction provides us with a remarkable

107. B.T., Erubin 69a, b.

insight with regard to the Rabbinic attitude toward the *Mumar*. The *Mumar* who openly profanes the Sabbath demonstrates his contempt for the law, and, hence, places himself in the category of one who has alienated himself totally from the law. On the other hand, the same Sabbath desecration when performed by one who attempts to be more discreet, is regarded more leniently because the violator indicated that he still possesses a regard for the law. Thus, the brazen Sabbath desecrator, as the *Meshumad*, could not be a מבטל רשות,<sup>108</sup> while the *Mumar* who observes the Sabbath in public could. This distinction between public and private transgression, because it is only made with regard to Sabbath observance, illustrates that apparently such deviations posed as a real and not theoretical problem to the Babylonian sages.

There is another category of *Mumar*, the defiant *Mumar* (מומר להכעיס), whose behavior was regarded most severely by the Sages. In, perhaps, the only Aggadic source pertaining to the *Mumar* in the Talmud, we learn how a defiant *Mumar* was considered by the Babylonian Amoraim. Here we read: ההוא גברא דזבין נפשיה ללחדי אתא לקמיה דרבי אמר ליה פירקן אמר ליה תנן המוכר את עצמו ואת בניו לעובדי כוכבים איך פדין אותו אבל פדין את הבנים משום קלקולא וכ"ש הכא דאיכא קטלא אמרו ליה רבנן לרבי אמר האי ישראל מומר הוא דקא חוו ליה דקאכיל גבילות וטרופות אמר להו אימא לחיאבון הוא דקא אכול יהא זימנין דאיכא היתירא ואיסורא קמיה ושביק היתירא ואכול אסורא א"ל לא קא שבקי לי דאפרקינך.<sup>109</sup> This amazing episode reveals that the defiant *Mumar* was held in such contempt that R. Ammi was not permitted to ransom one from the clutches of a tribe of cannibals, even though it meant the *Mumar's* death. This was obviously an extreme application of the ruling מורדין ולא מעלין,<sup>110</sup> which according to the Babylonian Amoraim applies to a defiant *Mumar*. These views, of course, support the contention of the Amora who holds that a defiant *Mumar* is to be considered a *Min*.<sup>111</sup> But a conflicting opinion declares that a defiant *Mumar* is still to be considered in the category of a *Mumar*, that is, even such a person was still part and parcel of the Jewish community.<sup>112</sup>

In order to understand the gravity of the defiant *Mumar's* attitude and action it is necessary to contrast him with the appetitive *Mumar*, (מומר לחיאבון). The *only*

108. Ibid; and *Infra*, p. 19.

109. B.T., *Gittin* 46b; 47a.

110. B.T., *Abodah Zarah* 26b.

111. Ibid. מומר פליגי רב אחא ורבינא חד אמר לחיאבון מומר להכעיס מין חד אמר אפילו להכעיס גמי מומר comp. B.T., *Horayot* 11a.

112. Ibid.

case in point offered by the Talmud in which we are able to distinguish between the *מומר לחיאבון* and the *מומר להכעיס* involves the eating of prohibited foods.<sup>113</sup> Here we find two Jews indulging in the same forbidden act, yet one is mildly censured, and the other is held seriously culpable. Clearly, the question of motivation is involved. The defiant *Mumar*, even if presented the opportunity to partake of acceptable foods, would spitefully and blatantly choose to violate these commandments.<sup>114</sup> In doing so, he uproots the entire prohibition from the Torah. It would seem, although there is no statement to this effect in the Talmud, that, since the deviant *Mumar* ostensibly perpetrates only this act, and may be wholly pious in every other area of Jewish observance, he is committed to the belief that the provisions of the law dealing with forbidden foods are not binding upon him. He may feel that these commandments were not meant for Jews of every generation, but were incumbent only upon the Jews of Biblical times, or he may deny the Divine Authorship of the law. To demonstrate his sincerity, he would fulfill scrupulously all other commandments, for there is no record of the defiant *Mumar* transgressing any other laws, yet, he openly, without regard for public censure, eats prohibited foods. This explanation of the defiant *Mumar* would solve two problems. Firstly, it would now become apparent why it was possible for a Sage like Rava to hold that a defiant *Mumar*, with regard to the eating of prohibited foods, was trustworthy as a witness.<sup>115</sup> Obviously, he was convinced that the *Mumar's* defiance was limited to that area of the law, that his was not a general antipathy regarding the law. Secondly, we can now understand why there are no other cases other than in this area involving a *מומר להכעיס*, even where the Amoraim had an opportunity to apply this category; such as with regard to the desecration of the Sabbath where they made the distinction of *בפרהסיא* and *בצנעא* and not of *להכעיס* and *לחיאבון*.<sup>116</sup> Apparently, this type of dissidence was prevalent and troublesome only as far as dietary laws were concerned.

The *מומר לחיאבון*, on the other hand, was one who admitted that the dietary laws were incumbent upon him, and, if a choice were involved, would prefer not to violate them. However, he is guilty of incontinence, for his craving prompts

113. Specifically, the discussions center about 1) The eating of *שקצים ורמשים* 2) The eating of *גבולות וטריפות* and 3) The eating of *חלב*. See B.T., Horayot 11a for complete discussion. The terms *מומר להכעיס*, or *מומר לחיאבון* are never utilized in connection with any other laws.

114. B.T., Gittin 47a *אסורא ואכל החירא ושביק קמיה ואסורא קמיה ושביק החירא ואכל*.

115. B.T., Sanhedrin 27a.

116. B.T., Erubin 69a, b.

him to disregard these laws. By becoming accustomed to such transgression, this *Mumar* could eventually lose the ability to distinguish between that which is permitted and what is forbidden.<sup>117</sup> Therefore, he is unquestionably considered unreliable as a witness.<sup>118</sup> Since it is not out of conviction that he permits himself to indulge in partaking of prohibited foods, but because of other motives, be it because these foods are less expensive,<sup>119</sup> or because of an unrestrained appetite,<sup>120</sup> we cannot be certain if he, too, cannot be enticed to offer false testimony.

In the light of this analysis, the Amoraic attitudes towards these two types of *Mumarim* are quite understandable. Those who regarded the defiant *Mumar* as a *Min*, and applied to him all of the regulations dealing with *Min*, did so because they felt that, although his defiance was limited to one particular area, his attitude rather than his act of nonconformity was so destructive to Judaism, that he was to be considered "beyond the pale". Then there were those who, though considering his trespasses vile, were not ready to place him beyond the framework of the Jewish community, especially since his nonconformity was proscribed. They even would permit him to serve as a witness. The appetitive *Mumar* was considered untrustworthy as a witness because he was weak, but since he preferred to obey the dietary laws when he could, he was permitted to even slaughter ritually, under certain conditions,<sup>121</sup> which testifies to his basic integrity.

The final category of *Mumar*, and its accompanying sub-divisions, pertains to the *Mumar* who is guilty of transgressing one particular law, (מומר לדבר אחד). Although the Amoraim do not explicitly state the precise nature of such dissidence, we can assume that for a Jew to be endowed with the *Mumar* appellation, he must have been persistent in his violation. No reference is made in the Talmud, in discussing this type of *Mumar*, to the categories of להכעיס, or לחיאבן, or לפורקסא, or בצנעא. The problem facing the Amoraim was whether such a *Mumar* should be considered a *Mumar* with regard to the entire Torah, or not.<sup>122</sup> There was a view which attempted to apply the vigorous ruling of Rabbi Meir in connection with the *Haber* to the מומר לדבר אחד. A *Tosephta* in *Demai* states: עם

117. B.T., *Hullin* 4b ביה כהתירא דמי ליה.

118. B.T., *Sanhedrin* 27a.

119. Rabbenu Hananel on discussion in B.T., *Sanhedrin* 27a.

120. Rashi on discussion. *Ibid.*

121. B.T., *Hullin* 4a אמר רבא מומר אוכל גבילות לחיאבן בחדק סכין ונתחן לו ומותר לאכול משחיטתו.

122. B.T., *Erubin* 69a.



wears *kilayim* may be considered a *Meshumad*,<sup>130</sup> the Talmud states: מאי בייניהו: איכא בייניהו כילאים דרבנן מר סבר מדאורייתא הוּי מומר דרבנן לא הוּי מומר ומר סבר כלאים כיון דמפרסם איסוריה אפילו בדרבנן הוּי מומר.<sup>131</sup> From the discussion it appears that the Amoraim were "reading into" the *Tosephta's Meshumad*, a case of a *Mumar* who wore *kilayim* prohibited by the Rabbis. What is in question is whether one who transgresses a Rabbinic ordinance is considered a *Mumar*. It may be surmised that, ordinarily, one who transgresses Rabbinic ordinances is not considered a *Mumar*, but R. Yose suggests that a Jew who transgresses even the Rabbinic prohibition of *kilayim* is to be considered a *Mumar* because this command was being widely violated.

It is possible that *kilayim* was singled out for this distinction because, undoubtedly, there existed Jews who were motivated to wear Gentile garb which contained *kilayim* in order to pose as Gentiles before the tax collectors. They employed this ruse so that they could avoid paying taxes specifically imposed upon Jews. Hence, we read in the Mishna ולא ילבש כלאים אפי ע"ג עשרה אפי לגנוב אפי המכס.<sup>132</sup>

Therefore, the Sages were more stringent in their attitude towards violators even of the Rabbinic prohibition of *kilayim*.

There remains only one law in the Talmud concerning the *Mumar* which has not, as yet, been discussed. It is the one case in which the type of *Mumar* is not at all specified. We read only: דתני רב המנונא בריה דרבא מפרוניה ס"ח תפילין ומוזחוח: שכתבן [מין] ומסור עובד כוכבים ועבד אשה וקטן וכוחי ישראל מומר פסולין שנאמר וקשרתם וכתבתם כל שישנו בקשירה ישנו בכחיבה.<sup>133</sup> Yet, in the light of our analysis of *Mumar*, it is obvious that the law prohibiting a *Mumar* from serving as a Scribe can apply only to a מומר לכל התורה כולה,<sup>134</sup> or to a מומר לאותו דבר.

130. *Supra*, p. 3.

131. B.T., *Horayot* 11a.

132. *Mishna Kilayim* IX, 2. See the Bartenuro, ad. loc., who records that his teachers offered this explanation of the *Mishnah*. This interpretation also throws light on the incident in *Genesis Rabbah* (*supra*, p. 10) where we find two pupils of Rabbi Joshua who, שינו עטיפתם בשעת, השמד, changed their garments during the period of persecutions, as was pointed out, in order to disguise themselves as non-Jews. The Bartenuro himself suggests, however, that our *Mishna* deals with the Jew who attempted to avoid paying taxes by wearing *Kilayim*, for clothes which were worn were exempt from taxes.

133. B.T., *Gittin* 45b.

134. This conclusion is also substantiated by the *Keseph Mishneh* on Maimonides, *Yad, Laws of Tephillen* I, 13.

Having completed our description of the *Mumar*, it is apparent that we have been dealing with a nonformist by deed, that is, one who, by virtue of his behavior, gave evidence that he was "changed" insofar as his allegiance to the prescribed norm of Jewish observance was concerned. His actions spoke for him. The categorization applies as well to the *Meshumad* who demonstrated by deed that he wished to separate himself from the Jewish community.

But, indeed, yet another characteristic concerning the use of the *Mumar* and *Meshumad* appellations may be discerned. We never find a *Mumar* or *Meshumad* charged with violating social or ethical commands, the laws "between man and man." No one who was a thief, nor one who lent money on interest, nor a liar or spreader of gossip were so labeled. Neither do we find the *Mumar* or *Meshumad* accused of any ideological heresy.

It is clear, therefore, that both the Tannaim and Amoraim, when using nomenclature for dissidence, did not use such appellations haphazardly. They were remarkably consistent and precise in the usage of such terminology.

